

Tuesday, April 24, 2012

The Board met at its offices at 5901 Green Valley Circle, Culver City at 9:32 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARING

Chomsik Pak, 516137 (AS)

6-27-07 to 12-22-08, \$28,887.14 Tax, \$0.00 Penalty

For Petitioner:

Justin Park, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the understatement established by audit of the predecessor, La EMS, Inc.

Action: Upon motion of Ms. Yee seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

James J. Martin, 574254

2005, \$29,856.00 Assessment

For Appellant:

James Martin, Taxpayer

For Franchise Tax Board:

Kristen Magers, Tax Counsel

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant resided in Indian country during the year at issue so that his reservation-sourced income is not subject to California tax.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 4.1](#))

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Shirley A. Tolela, 522393

2006, \$1,305.00 Assessment

For Appellant:

Shirley A. Tolela, Taxpayer

For Franchise Tax Board:

Craig Scott, Tax Counsel

Marguerite Mosnier, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that she is entitled to interest abatement in excess of that already granted by the Franchise Tax Board.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Note: These minutes are not final until Board approved.

Tuesday, April 24, 2012

The Board recessed at 12:15 p.m. and reconvened at 1:35 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PUBLIC HEARINGS

Property Taxes – State Assesseees’ Presentations on the Valuation of State-Assessed Properties

Ken Thompson, Chief, State-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding presentations on the valuation of state-assessed properties.

Speaker: Speakers were invited to address the Board, but there were none.

Business Taxpayers’ Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers’ Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers’ Bill of Rights hearings. Individuals have the opportunity to present ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board’s administration of its tax programs, including sales and use taxes, environmental fees, fuel taxes, and excise taxes, and any problems identified in the Taxpayers’ Rights Advocate’s Annual Report.

Speakers: Francis Harper, Taxpayer
Juan Guzman, Representative

Mr. Gilman discussed a written submission from Abe Golomb, Sales Tax Reduction Specialists, regarding recommendations for improving BOE’s iPhone applications ([Exhibit 4.2](#)).

Property Taxpayers’ Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers’ Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers’ Bill of Rights hearings. Individuals have the opportunity to present their ideas, concerns, and recommendations regarding legislation, the quality of agency services, and other issues related to the Board’s administration of its tax programs, including state and county property tax programs, and any problems identified in the Taxpayers’ Rights Advocate’s Annual Report.

Speakers: Speakers were invited to address the Board, but there were none.

Tuesday, April 24, 2012

SALES AND USE TAX APPEALS HEARINGS**Ike Reuben Chukwudi, 505067 (EH)**

1-1-05 to 12-31-08, \$180,988.63 Tax, \$18,514.81 Negligence Penalty

For Petitioner:

Ike R. Chukwudi, Taxpayer

Ogochukwu V. Onwaeze, Attorney

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.
 Whether adjustments are warranted to the audited cost of purchases of vehicles subject to use tax.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Rodrigo Moreno Incorporated, 432710 (EH)

4-1-03 to 3-31-06, \$52,011.75 Tax, \$6,228.41 Negligence Penalty

For Petitioner:

Ruben Perez, Representative

Juan Guzman, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.
 Whether a further adjustment to disallowed claimed bad debts is warranted.
 Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 3:15 p.m. and reconvened at 3:25 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Niknejad, Inc., 487383 (AS)

10-1-05 to 12-31-07, \$29,472.00 Claim for Refund

For Claimant:

Scott Monatlik, Witness

Wade Downey, Representative

Roderick Calub, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the sales at issue are exempt sales of printed sales messages or periodicals.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Tuesday, April 24, 2012

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Chief Red Cloud, LLC, 298286 (EA)

Arleen Dauber and Gerald Patrick Robeson, 298276 (EA)

4-1-01 to 3-31-04, \$161,447.32 Tax, \$14,049.84 Negligence Penalty, \$11,346.80 Amnesty Interest Penalty

Action: Redetermine as recommended by the Appeals Division.

D and L Wireless, Inc., 535814 (EA)

4-1-09 to 10-20-09, \$0.00 Tax, \$21,590.28 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Michael C. Hamaker, 394900, 421467 (UT)

1-26-06, \$15,840.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Hubbard Iron Doors, Inc., 491571 (AA)

10-1-05 to 9-30-08, \$286,463.03 Tax, \$30,977.11 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Rivkah, Inc., 459053 (AS)

7-1-04 to 6-30-07, \$276,618.79 Tax, \$27,661.92 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

T.K.O. Lighting, Inc., 469451 (FH)

4-1-04 to 3-31-07, \$9,721.99 Tax, \$5,401.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

White Skin Care & More, Inc., 489645 (AS)

2-1-07 to 6-30-08, \$7,477.50 Tax, \$0.00 Penalty

Action: Redetermine as recommended by the Appeals Division.

BMR Group, Inc., 326194, 340599, 353337, 353339 (EH)

4-1-02 to 9-30-02, \$0.00 Tax, \$1,127.77 Amnesty Interest Penalty

10-1-02 to 12-31-02, \$0.00 Tax, \$1,334.29 Amnesty Interest Penalty

1-2-01 to 3-31-02, \$0.00 Tax, \$5,921.94 Amnesty Interest Penalty

1-1-03 to 6-30-05, \$0.00 Tax

Action: Redetermine as recommended by the Appeals Division.

QM Corporation, 600252 (ET)

November 17, 2011, \$30.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

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Tuesday, April 24, 2012

Fuad Naji Saeed and Waleed Saeed Ben Saeed, 601282 (ET)

December 6, 2011, \$40.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Yong Soo Kim and Mihyun Kim, 600350 (ET)

November 23, 2011, \$84.50 approximate Value

Action: Determined that staff properly seized the tobacco products.

Steven Nguyen, 602382 (ET)

January 4, 2012, \$289.98 approximate Value

Action: Determined that staff properly seized the tobacco products.

Clarity World, Inc., 600246 (ET)

December 7, 2011, \$547.01 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Dawn C. Almanzor, 537241

2006, \$5,296.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Patrick Amott, 570245

2008, \$119.28 Assessment

Action: Sustain the action of the Franchise Tax Board.

Maxine L. Angell, 567797

2007, \$502.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ronald P. Cox and Chen Li, 537134

2005, \$1,358.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Paola M. Figueroa, 562808

2008, \$1,205.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Gauss Institute, Inc., 554193

2007, \$1,785.40 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

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Tuesday, April 24, 2012

Kevin G. Guerin and Deborah T. Connie, 439525

2003, \$845.00 Assessment

Action: Reverse the action of the Franchise Tax Board.

Donald Iwanski and Denise Iwanski, 529421

2006, \$849.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Douglas B. Lewis and Beverly C. Lewis, 522871

2005, \$14,026.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Lisa MacCarty, 557915

2007, \$273.00 Assessment

Action: Modify the action of the Franchise Tax Board.

James Roy Mick, Jr., 574311

2008, \$1,106.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nathan Porter, 578777

2008, \$1,896.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Christine J. Riddle, 558199

2006, \$139.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Monica Trejos, 565924

2008, \$871.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Chigoziem Uzoigwe, 547523

2006, \$25,313.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Denise A. Willson, 554481

2006, \$370.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Brian David Black and Carol A. Black, 529472

2006, \$1,096.06 Claim for Refund

Action: Deny the petition for rehearing.

H&H Marine Center, Inc., 490565

2006, \$62,231.76 Tax, \$15,307.94 Late Filing Penalty, \$15,307.94 Notice and Demand Penalty, \$203.00 Filing Enforcement Cost Recovery Fee

Action: Deny the petition for rehearing.

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Tuesday, April 24, 2012

Marie R. Sanders, 522825

2007, \$1,555.21 Claim for Refund

Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Castec, Inc., 435825 (AC)

10-1-03 to 9-30-06, \$176,237.76

Action: Approve the redetermination as recommended by staff.

Tenet Healthsystem Hospitals, Inc., 571351 (AA)

1-1-06 to 3-31-09, \$398,273.90

Action: Approve the redetermination as recommended by staff.

The Boeing Company, 434143 (OH)

1-1-02 to 12-31-04, \$1,684,206.22

Action: Approve the redetermination as recommended by staff.

McKesson Medical – Surgical, Inc., 493770 (OH)

1-1-03 to 12-31-05, \$351,413.96

Action: Approve the redetermination as recommended by staff.

Olympus America, Inc., 570959 (OH)

1-1-03 to 12-31-07, \$296,311.73

Action: Approve the redetermination as recommended by staff.

Casa De Carlos, Inc., 472423 (AC)

7-1-05 to 6-30-08, \$111,846.13

Action: Approve the redetermination as recommended by staff.

ADAC Research & Mfg., Inc., 507469 (GH)

4-1-02 to 3-31-05, \$550,230.84

Action: Approve the redetermination as recommended by staff.

Easy Fuel, Inc., 444640 (GH)

7-1-03 to 12-31-06, \$361,695.30

Action: Approve the redetermination as recommended by staff.

Extreme Networks, Inc., 571359 (GH)

1-1-06 to 12-31-10, \$57,875.86

Action: Approve the redetermination as recommended by staff.

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Tuesday, April 24, 2012

CNET Networks, Inc., 531039 (BH)

4-1-05 to 3-31-08, \$130,205.95

Action: Approve the denial of claim for refund as recommended by staff.

Modern Finance Company, 574940 (AC)

7-1-09 to 12-31-10, \$107,260.00

Action: Approve the denial of claim for refund as recommended by staff.

Credit One Corporation, 565984 (EA)

10-1-09 to 9-30-10, \$155,622.00

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel not participating in accordance with Government Code section 87105 in *ConocoPhillips Company, 561903 (OH)*, the Board made the following orders:

Jalidat Incorporated, 600410 (AC)

1-1-11 to 6-30-11, \$964,407.25

Action: Approve the credit and cancellation as recommended by staff.

Jose Vargas Galvan, 597289 (BH)

1-1-08 to 2-28-10, \$135,163.73

Action: Approve the credit and cancellation as recommended by staff.

Chevron U.S.A., Inc., 598182 (BH)

1-1-03 to 9-30-06, \$818,331.31

Action: Approve the refund as recommended by staff.

Coherent, Inc., 597920 (GH)

1-1-06 to 12-31-08, \$583,910.86

Action: Approve the refund as recommended by staff.

Raytheon Technical Services Company, 504862 (OH)

10-1-05 to 12-31-06, \$390,331.35

Action: Approve the refund as recommended by staff.

US Airways, Inc., 564708 (OH)

7-1-10 to 12-31-10, \$523,105.92

Action: Approve the refund as recommended by staff.

Tuesday, April 24, 2012

ConocoPhillips Company, 561903 (OH)

4-1-08 to 12-31-08, \$2,694,420.37

Action: Approve the refund as recommended by staff. Ms. Steel not participating in accordance with Government Code section 87105.

Cymer, Inc., 533167 (FH)

1-1-10 to 12-31-10, \$200,814.01

Action: Approve the refund as recommended by staff.

APC Sales & Service Corp., 564713 (OH)

10-1-10 to 12-31-10, \$226,648.00

Action: Approve the refund as recommended by staff.

VFS Financing, Inc., 483160 (OH)

4-1-04 to 12-31-09, \$459,136.32

Action: Approve the refund as recommended by staff.

Witron Integrated Logistics, Inc., 600411 (OH)

10-1-06 to 9-30-09, \$4,707,163.57

Action: Approve the refund as recommended by staff.

A & A Amalgated Printing Enterprises, Inc., 351026 (AS)

1-1-03 to 12-31-05, \$161,460.01

Action: Approve the refund as recommended by staff.

Harris Salinas Rebar, Inc., 577235 (OH)

4-1-07 to 6-30-10, \$215,494.53

Action: Approve the refund as recommended by staff.

CNET Networks, Inc., 531039 (BH)

4-1-05 to 3-31-08, \$140,414.73

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 588262 (OH)

4-1-11 to 9-30-11, \$715,705.00

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 593154 (EA)

7-1-11 to 9-30-11, \$154,899.00

Action: Approve the refund as recommended by staff.

Modern Finance Company, 574940 (AC)

7-1-09 to 12-31-10, \$227,735.00

Action: Approve the refund as recommended by staff.

Credit One Corporation, 565984 (EA)

10-1-09 to 9-30-10, \$200,094.00

Action: Approve the refund as recommended by staff.

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Tuesday, April 24, 2012

Jag Footwear Accessories & Retail, 597917 (OH)

4-1-07 to 3-31-10, \$154,882.05

Action: Approve the refund as recommended by staff.

Sun Community Federal Credit Union, 589949 (FH)

4-1-09 to 9-30-11, \$195,428.00

Action: Approve the refund as recommended by staff.

GMAC Automotive Bank, 525120 (OH)

10-1-06 to 12-31-08, \$184,724.16

Action: Approve the refund as recommended by staff.

The Nautilus Group, Inc., 602996 (OH)

10-1-05 to 9-30-08, \$169,106.00

Action: Approve the refund as recommended by staff.

Backstage Web, Inc., 597514 (AS)

4-1-07 to 12-31-09, \$184,287.32

Action: Approve the refund as recommended by staff.

Chrysler Financial Services America, LLC, 358805 (OH)

1-1-06 to 6-30-09, \$13,696,314.47

Action: Approve the refund as recommended by staff.

Cureline, Inc., 565990 (BH)

8-1-09 to 12-31-10, \$175,667.38

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Health Plan of San Mateo, 600012 (ET)

4-1-10 to 6-30-10, \$102,569.70

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Health Net Life Insurance Company, 600044 (ET)

4-1-11 to 6-30-11, \$486,229.10

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Tuesday, April 24, 2012

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**OFFER-IN-COMPROMISE RECOMMENDATION**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offer in Compromise Recommendation of *Thomas Horrell Ray* as recommended by staff.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD APRIL 24, 2012

James J. Martin, 574254

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Shirley A. Tolela, 522393

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and duly carried, Mr. Horton, Ms. Steel and Mr. Runner voting yes, Ms. Yee and Ms. Mandel voting no, the Board reversed the action of the Franchise Tax Board.

Michael B. Lozada, 578331

2007, \$1,559.00 Assessment

For Appellant:

Appearance Waived

For Franchise Tax Board:

Marguerite Mosnier, Tax Counsel

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has demonstrated error in the assessment, which was based upon federal adjustments.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD APRIL 24, 2012

Chomsik Pak, 516137 (AS)

David Levine, Tax Counsel IV, Appeals Division, Legal Department, advised of the Department's revised recommendation to increase allowance for recession from 10 percent to 15 percent for the 2008 period, as well as a 15 percent recession adjustment for the last quarter of the 2007 period.

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and duly carried, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Mr. Horton and Ms. Mandel voting no, the Board ordered that the tax liability be redetermined to \$7,807.39, as concurred by petitioner.

Note: These minutes are not final until Board approved.

Tuesday, April 24, 2012

Heartbeat, Inc., 417580 (AC)

10-1-03 to 9-30-06, \$47,995.65 Tax, \$0.00 Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether further adjustments to the audited understatement of taxable sales are warranted.

Action: The Board deferred consideration of the matter to Wednesday, April 25, 2012.

Ike Reuben Chukwudi, 505067 (EH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise Program.

Rodrigo Moreno Incorporated, 432710 (EH)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Steel and Mr. Runner voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the negligence penalty be deleted, and that the petition otherwise be redetermined as recommended by the Appeals Division.

Niknejad, Inc., 487383 (AS)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 4:48 p.m.

The foregoing minutes are adopted by the Board on August 22, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *Applied Companies, 526527; and, Michael Zapara and Gina Zapara, 252128.*

Wednesday, April 25, 2012

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:32 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS**John M. Young, 446018 (UT)**

2-07-08, \$581.00 Claim for Refund

For Claimant:

John Young, Taxpayer

For Sales and Use Tax Department:

Erin Dendorfer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether tax was overpaid and should be refunded because claimant returned the vehicle to the seller for the full amount paid.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Heartbeat, Inc., 417580 (AC)

10-1-03 to 9-30-06, \$47,995.65 Tax, \$0.00 Penalty

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether further adjustments to the audited understatement of taxable sales are warranted.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Guillermo Memo Estrada, 437729 (AR)

10-1-04 to 6-30-05, \$12,689.00 Tax, \$1,268.90 Failure to File Penalty, \$1,268.90 Finality Penalty

For Petitioner:

Guillermo Estrada, Taxpayer

For Sales and Use Tax Department:

Erin Dendorfer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Sound Executives Corporation pursuant to Revenue and Taxation Code section 6829.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

Wednesday, April 25, 2012

Highline Specialist Corp., 468309 (EA)

7-1-03 to 6-30-06, \$752.82 Tax

For Petitioner:

Fariborz (Fred) Yaghoubi, Taxpayer

Mori Shariat, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner owes use tax on the fair rental value of vehicles removed from its inventory for use as loaner vehicles.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

David Bryan Royal, 515517 (AC)

1-1-06 to 12-31-08, \$25,756.30 Tax

For Petitioner:

David Royal, Taxpayer

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted based on petitioner's inability to pay the determination.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

HK Cuisine, Inc., 522224 (EH)

3-1-07 to 3-31-09, \$11,578.52 Tax, \$0.00 Penalty

For Petitioner:

Ray S. Park, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the amount of unreported taxable sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Tim Finnell, Inc., 521823, 577253 (EH)

The Chair deferred the matter to the following day.

The Board recessed at 12:11 p.m. and reconvened at 12:23 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Wednesday, April 25, 2012

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
APRIL 25, 2012****Kamal Noorzady, 509930 (EH)**

7-1-05 to 2-14-08, \$2,916.86 Tax, \$12,255.75 Negligence Penalty

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that an additional allowance for voided report of sale forms is warranted.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer about the Offer in Compromise Program.

LR Auto, Inc., 511001, 539222 (EA)

1-1-02 to 9-30-04, \$85,112.63 Tax

For Petitioner/Claimant:

Waived Appearance

For Sales and Use Tax Department:

Scott Claremon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is liable as a successor to Rafael Eleasar Rodas.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to continue collection against the predecessor before proceeding against petitioner.

Highline Specialist Corp., 468309 (EA)

Final Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the per day calculation be reduced from 400 days to 132 days and project the fair rental value at 132 days.

David Bryan Royal, 515517 (AC)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer about the Offer in Compromise Program.

John M. Young, 446018 (UT)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, April 25, 2012

HK Cuisine, Inc., 522224 (EH)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the measure of tax be further reduced by \$24,000.00 for the four payroll checks issued to owner and that the petition otherwise be redetermined as recommended by the Appeals Division.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 12:31 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 1:29 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Liz Houser, Deputy Director, Administration Department announced the appointment of Lou Feletto to Chief, Special Taxes Audit and Carrier Division, Property and Special Taxes Department.

The Board adjourned at 1:30 p.m.

The foregoing minutes are adopted by the Board on August 22, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *Sanitech Corporation, 477146 (OH); Omar Manzor Motawakel and Farzan Farmani, 519058 (AC); Randolph Hope Bruce Murad, 404667 (FH); and, Michelle Pauline Murad, 404668 (FH).*

Thursday, April 26, 2012

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:31 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

James Eugene Goldstein, 442332 (AC)

1-1-03 to 4-24-07, \$369,810.62 Tax, \$243.60 Late Payment Penalties, \$92,578.10 Fraud Penalty, \$38,019.89 Finality Penalties

For Petitioner:

James Eugene Goldstein, Taxpayer

Warren Nemiroff, Attorney

Cary Huxsoll, Tax Counsel

For Sales and Use Tax Department:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of National Imaging Company, Inc. (NIC) pursuant to Revenue and Taxation Code section 6829.

Whether adjustments are warranted to NIC's understatement established by audit for the period January 1, 2004, through April 24, 2007.

Whether the fraud penalty was properly imposed.

Whether taxpayer has established reasonable cause sufficient for relieving the penalties for late prepayments and finality penalties originally assessed against NIC.

Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be held in abeyance pending the outcome of the related case that is in settlement.

Joann Richmond, Chief, Board Proceedings Division, stated that the taxpayer in the matter of *Tim Finnell, Inc.*, 521823, 577253 (EH) was contacted and that the matter is postponed as requested.

Zoba International Corp., 434591 (EH)

10-1-03 to 9-30-06, \$44,375.16 Tax

For Petitioner:

Mohamed Sabry, Taxpayer

David A. Alvarez, Representative

For Sales and Use Tax Department:

Andrew Kwee, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether three of the petitioner's purchases qualify for the partial exemption for teleproduction or other postproduction services pursuant to Revenue and Taxation Code section 6378.

Whether an adjustment is warranted for an arbitration allowance awarded to petitioner.

Whether further reductions are warranted to the measure of unreported ex-tax purchases of consumable supplies.

Thursday, April 26, 2012

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board rescinded its prior vote.

Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

East Coast Foods, Inc., 444779 (AS)

7-1-01 to 6-30-05, \$1,349,989.74 Tax, \$134,999.02 Negligence Penalty, \$46,060.60 Amnesty Double Negligence Penalty, \$52,564.30 Amnesty Interest Penalty
For Petitioner: Sam L. White, Representative
John L. Sadd, Jr., Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.
Whether petitioner was negligent.
Whether relief of the amnesty-related penalties is warranted.

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered a readudit.

Union Outlet, Inc., 547465 (AS)

1-1-06 to 12-31-08, \$157,819.48 Tax, \$15,781.96 Negligence Penalty

For Petitioner:

Elias Aziz Lavi, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that it made any sales for resale during the audit period.

Whether petitioner has established that any of the disallowed claimed exempt sales in interstate commerce actually qualified for the exemption.

Whether petitioner has established that the amount of unreported sales is overstated or for nontaxable sales.

Whether petitioner was negligent.

Action: Upon motion of Mr. Runner, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered a readudit.

The Board recessed at 11:18 a.m. and reconvened at 11:30 a.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel.

Thursday, April 26, 2012

Jay Newman, 519365, 571504 (AC)

11-17-04, \$0.00 Tax, \$140.16 Interest

For Petitioner/Claimant:

Jay Newman, Taxpayer

For Sales and Use Tax Department:

Erin Dendorfer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether further relief of interest is warranted.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Biz Source, Inc., 493796 (EH)

1-2-05 to 12-31-07, \$9,613.04 Tax, \$2,640.44 Negligence Penalty

For Petitioner:

Elias Teshome, Taxpayer

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the understatement of reported taxable sales.

Whether petition was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:26 p.m. and reconvened at 12:27 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD APRIL 26, 2012

Jay Newman, 519365, 571504 (AC)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be granted.

M & Y Safar Brothers, Inc., 466345 (AS)

7-1-03 to 6-30-06, \$37,599.62 Tax, \$151,013.39 Negligence Penalty

M & Y Safar Brothers, Inc., 467762 (AS)

5-1-04 to 12-31-05, \$0.00 Tax, \$34,800.69 Negligence Penalty

For Petitioners:

Waived Appearance

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the audited amount of fuel sales under seller's permit SR Y AS 97-884213.

Whether petitioner was negligent.

Thursday, April 26, 2012

Action: Ms. Steel moved to use 4.86 percent for the first and second quarters of 2006 instead of 8.81 percent, and the petition otherwise be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Runner but failed to carry, Ms. Steel and Mr. Runner voting yes, Mr. Horton, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Biz Source, Inc., 493796 (EH)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Mr. Horton, Ms. Steel and Mr. Runner and voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the penalty be waived and the pilferage allowance increased to 3 percent.

FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HELD APRIL 26, 2012

Mairaj Ali, 562696 (ET)

August 20, 2009, \$328,508.00 Approximate Value

For Petitioner: Waived Appearance

For Property and Special Taxes Department: Pamela Mash, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the tobacco products should be forfeited because they are described by Business and Professions Code section 22978.2, subdivision (b).

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board determined that staff properly seized the tobacco products.

SPECIAL TAXES APPEALS HEARING

Loh Sun International, Inc., Kent La, Nancy La, and John La, 480987, 480989, 506428 (ET)

1-1-01 to 6-30-03, \$2,049,540.00 Tax, \$512,385.00 Fraud Penalty

7-1-03 to 7-31-03, \$60,117.00 Tax, \$15,029.25 Fraud Penalty

7-1-03 to 7-31-03, \$133,110.00 Tax, \$33,277.50 Fraud Penalty

For Petitioners: John La, Taxpayer
Nancy La, Taxpayer

For Property and Special Taxes Department: Pamela Mash, Tax Counsel Contribution

Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether Loh Sun International, Inc., Kent La, Nancy La, and John La operated as a partnership liable for unreported distributions of cigarettes in California.

Whether adjustments are warranted to the amounts of unreported distributions.

Whether ISOD has supported fraud by clear and convincing evidence.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Thursday, April 26, 2012

The Board recessed at 1:27 p.m. and reconvened at 1:33 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD APRIL 26, 2012

Loh Sun International, Inc., Kent La, Nancy La, and John La, 480987, 480989, 506428 (ET)

Final Action: Ms. Steel moved that the son, John La, not be held liable, and that the petition otherwise be redetermined as recommended by the Appeals Division. The motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Action: Set the tobacco products tax rate at 30.68 percent for Fiscal Year 2012/13, as recommended by staff ([Exhibit 4.3](#)).

Action: Set the rate of prepayment of sales tax on diesel fuel distributions for the period July 1, 2012 through March 31, 2013 at \$0.29 per gallon, as recommended by staff ([Exhibit 4.4](#)).

Exhibits to these minutes are incorporated by reference.

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Eric Steen, CROS Project Director, provided a report regarding the progress on the CROS project to replace BOE's two current tax legacy technology systems.

The Board adjourned at 1:38 p.m.

The foregoing minutes are adopted by the Board on August 22, 2012.

Note: The following matters were removed from the calendar prior to the meeting: *Tim Finnell, Inc.*, 521823, 577253 (EH); *Stefano Jean Louigi Raspi*, 309546 (AS); and, *Ashraf Alfonose Youssef*, 358704 (ET).

Note: These minutes are not final until Board approved.